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09/463,024	02/15/2002	G. Ganga Raju	31174/30000	5778

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EXAMINER	
AHMED, HASAN SYED	
ART UNIT	**PAPER NUMBER**
1618	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/463,024	RAJU, G. GANGA	
	Examiner	Art Unit	
	HASAN S. AHMED	1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *25-27,29 and 31-41* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *25-27,29 and 31-41* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

- Receipt is acknowledged of applicant's remarks, which were filed on 7 February 2008.
- The 35 USC 112 and statutory-type double patenting rejections of the previous Office action are withdrawn in view of the remarks.

* * * * *

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 25-27, 29, and 31-41 remain rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,612,039 ("Policappelli") in view of US 3,764,692 ("Lowenstein").

Policappelli teaches a dietary supplementation composition comprising the calcium salt of Garcinia Cambogia-hydroxycitric acid extract (column 3, lines 5-14 and column 5, line 60 - column 6, line 29).

According to Policappelli, the Garcinia extract can be used to reduce appetite and assist in dietary control (column 3, lines 12-14 and column 5, lines 66-67). In terms of the dosage amount, about 750 mg may be administered to an individual prior to a meal (Claims 3-4). Since the compositions can be administered to an individual prior to breakfast, lunch, and dinner, it is the examiner's position that the compositions can be administered to an individual up to three times per day (Claims 3-5).

Although Policappelli teaches a hydroxycitric acid-based composition comprising calcium, it does not teach adding potassium or sodium to the weight loss composition. However, Lowenstein teaches a salt form of hydroxycitric acid using potassium or sodium (col. 2, line 4).

Neither Policapelli nor Lowenstein explicitly teach a double or triple salt of hydroxycitric acid, however, by virtue of the chemical structure of hydroxycitric acid, i.e. three carboxylic acid domains, formation of a double or triple salt is inherent. Salts (i.e. neutralized hydroxycitric acid) are formed, using for instance, sodium, calcium, or potassium hydroxide. Its should be noted that the terms "double salt" and "triple salt" are recited solely in the amended claims, not in the original specification.

While neither Policappelli, nor Lowenstein explicitly teach the percentages of instant claims 25-27, it is the position of the Examiner that it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine suitable percentages through routine or manipulative experimentation to obtain the best possible results, as these are variable parameters attainable within the art.

Moreover, generally, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456; 105 USPQ 233, 235 (CCPA 1955). Applicants have not demonstrated any unexpected or unusual results, which accrue from the instant percentage ranges.

Furthermore, the references are silent with respect to the properties of instant claims 35-37. Applicant's composition, as claimed, is the same as the prior art. It contains the same components in the same configuration. Properties are the same when the structure and composition are the same. Thus, burden shifts to applicant to show unexpected results, by declaration or otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed properties would have been present once the composition was employed in its intended use. *In re Best*, 195 USPQ 433.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to disclose a double or triple salt of hydroxycitric acid comprising calcium and potassium or sodium, as taught by Policappelli in view of Lowenstein. One of ordinary skill in the art at the time the invention was made would have been motivated to make such a composition because it is useful for reducing appetite and controlling diet, as explained by Policappelli.

* * * * *

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 25-27, 29, and 31-41 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2, 6, 10-11, 13-36 of copending Application No. 11/209429 ('429). Although the conflicting claims are not identical, they are not patentably distinct from each other because '429 claims compositions comprising (1) hydroxycitric acid in the amount of approximately 40-65%, calcium in an amount of either 14 - 26% by weight or 9 - 13% by weight (depending on how the percentage by weight is calculated), potassium in an amount of either 24 - 40% by weight or, 9-20% by weight, or 14 - 18% by weight (depending on how the percentage by weight is calculated), or sodium in an amount of either 14 - 24% by weight or 5 -12% by weight (depending on how the percentage by weight is calculated), and mixtures thereof. Like the instant claim set, the composition claimed by '429 can be used as a food product and is suitable for reducing body weight.

Because '429 claims a food product comprising hydroxycitric acid, calcium, and potassium or sodium, and claims that said product can be used to reduce body weight (claim 15, 26, 28), the examiner respectfully suggests that one of ordinary skill in the art at the time the invention was made would have the requisite motivation to claim a food composition comprising hydroxycitric acid, calcium, potassium, or sodium as well as a method of using said composition to reduce body weight. The expected result of such a

combination would be an effective weight reducing food composition. As such, given the claims of '429, one of ordinary skill in the art at the time the invention was made would have the motivation to claim a food composition comprising hydroxycitric acid, calcium, potassium, or sodium as well as a method of using said composition to reduce body weight.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

* * * * *

Response to Arguments

Applicant's arguments filed 7 February 2008 with respect to the 35 USC 103 rejection have been fully considered but they are not persuasive.

1. Applicant argues that the prior art teaches single cation salts of HCA. *See* remarks, page 6.

As explained above, by virtue of the chemical structure of hydroxycitric acid, i.e. three carboxylic acid domains, formation of a double or triple salt is inherent. Salts (i.e. neutralized hydroxycitric acid) are formed, using for instance, sodium, calcium, or potassium hydroxide.

It should be noted that this rationale was used by applicant to argue the 35 USC 112 new matter rejection of the previous Office action. As noted by applicant (*see* remarks, page 6, 1st paragraph), "[w]hen calcium hydroxide and potassium hydroxide are added to HCA, one of ordinary skill in the art would know that an acid-base reaction takes place forming a double salt."

2. Applicant argues that the mixed cation salt of HCA being claimed produces unexpected results. *See* remarks, page 6.

It is examiner's position that mixed cation salts of HCA are obvious in view of the prior art (see 35 USC 103 rejection, above). As such, the claimed properties would have been present once the composition was employed in its intended use. *In re Best*, 195 USPQ 433.

3. Applicant argues that Policappelli's, "…calcium salt of HCA has a "characteristic smoky-herbal" odor, a "characteristic salty-herbal" taste, and a "light tan" color. *See* remarks, page 7.

Examiner respectfully disagrees with applicant's reading of Policappelli. The odor, taste, and color described at col. 6, lines 7-9 of Policappelli describe a calcium salt of Garcinia Cambogia-hydroxycitric acid extract, not a pure calcium salt of HCA. As such, characteristics such as taste, odor, taste, and color may be a function ingredients in the extract other than the calcium salt of HCA.

* * * * *

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASAN S. AHMED whose telephone number is (571)272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. S. A./
Examiner, Art Unit 1618

/Humera N. Sheikh/
Primary Examiner, Art Unit 1618